

1 Hon. Marsha J. Pechman
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10 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA, *ex rel.*
12 Girish Parikh,

13 Plaintiff,

14 v.

15 PREMERA BLUE CROSS,
a Washington non-profit corporation

16 Defendant.

No. C-01-0476

Memorandum in Support of Settlement in
Response to the Court's Order (Dkt. #305)

Note on Motion Calendar May 21, 2007

1 Relator hereby files the attached declarations of the Relator, Girish Parikh and his lead
2 counsel, Timothy Keller, Esq., pursuant to this Court's Order (Dkt. 305) directing the parties
3 address the reasonableness of the settlement reached in this matter. In that Order, this Court
4 required:

5 The parties shall file a copy of their settlement agreement and/or declarations
6 explaining why the settlement terms are reasonable with the Court no later
7 than Monday, May 21, 2007. If the parties wish to have the settlement
agreement and/or declarations reviewed under seal, they may file a motion to
8 seal by following the provisions of Local Civil Rule 5(g).

Dkt. 305, p. 4.

9 Relator notes that Premera has already filed with this Court the settlement agreement (*See*
10 Exhibit B to Declaration of Karen F. Jones in Support of Approval of Settlement and Motion to
11 Seal (Dkt #307)) as well as the April 7, 2007, confidential Mediation term sheet prepared and
12 executed by the parties immediately at the conclusion of the 13 hour mediation (*See* Dkt #310).
13 Therefore, there is no need for Relator to file either of these documents.

14 Relator notes that Premera has filed the Mediation term sheet under seal¹. This is
15 consistent with Premera's agreement with Relator (*See ¶ 11 of the Settlement Agreement,*
16 *Exhibit B to Dkt #307*), the confidentiality agreement executed by the Parties (Attached to
17 Dkt. 310), Fed. R. Evid. 408, and also C.R. 39.1(a)(6) upon which this Mediation was
18 convened, which provides:

19 *Confidentiality.* Except as otherwise required by law or agreed by the
20 litigants, or otherwise provided by this rule, **all ADR proceedings under this**
21 **rule, including communications, statements, disclosures and**

22 ¹ Relator understands that the United States has communicated its intention to object to the sealing of any
23 documents in this matter. Any such dispute between the United States and Premera regarding the propriety of
24 sealing documents is collateral to the reasonableness of the proffered settlement presented here and the outcome of
25 that dispute has no bearing on the reasonableness of the settlement between Relator and Premera. As such, Relator
requests that the Court treat this issue as it would a post-dismissal motion and dismiss this action without respect to
that remaining issue.

1 **representations made by any party, attorney or other participant in the**
2 **course of such proceeding, shall in all respects, be confidential, and shall**
3 **not be reported, recorded, placed in evidence, disclosed to anyone not a**
4 **party to the litigation, made known to the trial court or jury, or construed**
5 **for any purpose such as an admission or declaration against interest. No party**
6 **shall be bound by anything done or said during such proceedings unless a**
7 **settlement or other agreement is reached.**

8 *(Emphasis Added).*

9 The settlement is contingent on three events: 1) Execution by the Department of Justice
10 of a stipulation and order of dismissal with prejudice as to Relator and without prejudice as to
11 the United States by May 9, 2007; 2) The Court's dismissal of the Lawsuit (Counts II through
12 IV) with prejudice as to the Relator and without prejudice as to the United States with respect
13 to Counts II through III; and 3) The Parties' and undersigned counsel's execution of the
14 Agreement. (See ¶ 9 of the Settlement Agreement, Exhibit B to Dkt #307 Currently, all
15 contingencies except number 2, dismissal of the action, have been satisfied.

16 The attached Declaration of Relator, Girish Parikh, establishes that he is satisfied with
17 the settlement and wishes to end the litigation (¶ 6 of Girish Parikh's Declaration, attached
18 hereto as Exhibit 1). He also specifies that he is pleased with the services of his counsel and
19 agrees to the recovery of their incurred costs as well as their receipt of their negotiated
20 discounted attorneys' fees (¶ 7 of Exhibit 1).

21 Proof of liability for Mr. Parikh's retaliatory discharge claim was abundant (see Motion
22 for Summary Judgment on Count IV, Dkt. # 229, Premera's response, Dkt. # 269, and
23 Relator's Reply Dkt. # 278). Dr. Mathur, our expert economist retained to testify on Mr.
24 Parikh's economic damages, indicated in his report and testimony (Exhibit A of Attorney
25 Keller's Declaration, attached hereto as Exhibit 2) that Relator's back pay damages were
26 \$491,764 (subject to doubling under 31 U.S.C. § 3730(h) to \$983,528) and that Relator's front
27 pay losses were \$730,889. Based on Dr. Mathur's findings, Mr. Parikh was entitled to
28 \$1,714,417 for his economic loss alone. In addition, Mr. Parikh was entitled to "special

1 damages" under § 3730(h) consisting of non-economic losses for the emotional damage
2 suffered by our client. (¶ 3 of Keller Declaration).

3 During the eight years spent on this case by four different firms, and sole practitioner
4 local counsel, the attorneys' fees were substantial. This was necessitated in part by the
5 extensive and zealous legal representation of Defendant, which involved no less than five
6 separate large national and international law firms. Although Relator's counsel's
7 representation began in 2000, the vast majority of Relator's attorneys' fees and costs were
8 incurred since the unsealing of the case during the extensive discovery and successful motions
9 practice of Relator necessitated by the Defendant's positions.

10 The mediation involved aggregate offers and counter-offers, which were not broken
11 down separately into fees or payments to Mr. Parikh. What drove the negotiations from
12 Relator's Counsel's perspective, however, was our client's expressed goal that he receive a
13 Net Settlement Amount. (See ¶¶ 3, 4 and 5 of Parikh Declaration). Discounts and reductions in
14 Relator's counteroffers were comprised of reductions in attorneys' fees, all done in the
15 presence of and with the consent of Relator.

16 The Settlement Agreement provides that Relator's False Claims Act and retaliation
17 claims are to be dismissed with prejudice while the claims of the United States will be
18 dismissed without prejudice (See ¶ 10 of Settlement Agreement, Exhibit B of Docket 307).
19 The parties contemplated such a dismissal of the United States because the United States
20 indicated to the parties during the mediation that it did not view the actions of Premera as
21 amounting to a False Claims Act violation but did believe that there was an overpayment of
22 MSP funds by Premera. (¶ 6 of Keller Declaration).

23 During the course of the mediation it became clear that Premera had two main
24 conditions to settlement: (1) Relator's agreement to hold the settlement confidential, to which
25 Relator agreed; and, (2) it would not agree to pay a "False Claims Act" settlement. (¶ 7 of
26 Keller Declaration). Thus, in the course of the mediation, Premera and AUSA Pete Winn

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1 indicated they would attempt to settle the United States claims through separate administrative
2 negotiations involving CMS personnel. If that administrative negotiation was unsuccessful,
3 the United States indicated it would then proceed against Premera under contract and unjust
4 enrichment causes of action—causes of action that Relator is not empowered to bring on
5 behalf of the United States. (¶ 8 of Keller Declaration). As described in the settlement
6 agreement and as promised by Relator during the negotiations, Relator waived his claim to
7 any alternate remedy share of any consideration paid by this administrative recovery under 31
8 U.S.C. § 3730(c)(5). (See ¶ 6 of Settlement Agreement, Exhibit B of Dkt. 307; ¶ 3 of Parikh
9 Declaration).

10 Relator's receipt of settlement proceeds clearly pertains to resolution of his § 3730(h)
11 retaliatory discharge claim and the attorneys fees and expenses he incurred in prosecuting that,
12 and other related False Claims Act claims. To the extent that Relator received fees which
13 could be perceived to be more closely associated with the *qui tam* allegations, these
14 allegations are inextricably linked and related to the § 3730(h) claim.² To maximize a
15 recovery under his False Claims Act retaliation claim, it was necessary, from Relator's
16 counsel's perspective, to prove that Premera was motivated to fire Relator because of the False
17 Claims Act violations that he complained about. Thus, it was necessary to prove that the
18 alleged False Claims Act fraud was actually committed by Premera. Under the facts
19 presented, Relator's counsel perceived that a jury would be substantially less sympathetic to
20 Relator's retaliatory discharge case where no actual fraud had been demonstrated. (See ¶ 10 of
21 Keller Declaration).

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23 ² See e.g. *Aguirre v. L.A. Unified Sch. Dist.*, 461 F.3d 1114, 1122-1123 (9th Cir. 2006)(Pregerson, J.
24 concurring)(relying on *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) and recognizing
25 that where work performed in pursuit of related claims is inseparable, compensation for successful and
unsuccessful claims is appropriate); see also *U.S. ex rel Lincoln v. Med Data*, p. 8 of 9, cause no. C03-3834P
(W.D. Wa., Sept. 8, 2006, Dkt. 53)(Order denying in part Defendant's Motion to Bifurcate Relator's personal
26 claim from the qui tam action since the "claims also overlap.")

1 Second, though the Relator has agreed to dismiss Counts II through IV with prejudice,
2 he specifically required that the dismissal to the United States be *without* prejudice under
3 circumstances where the United States affirmatively asserted that it would protect its own
4 interests and has since done so by administratively settling with Premera. (¶¶ 11 and 12, of
5 Keller Declaration). The United States suffers no prejudice under the proposed settlement and
6 there can be no serious question that the Relator adequately represented the government's
7 interests in this litigation.³ Since the United States is being paid nothing for the *qui tam* False
8 Claims Act allegations in Counts II and III, the defendant is not entitled to receive a dismissal
9 with prejudice by the Government. Thus, with respect to the United States, the dismissal of
10 the *qui tam* False Claims Act allegations should be "without prejudice."

11 Were it not enough to further Relator's discharge claim by incurring fees and expenses
12 related to the *qui tam* action, the United States itself has acknowledged that its pending
13 administrative claims against Premera, which have been tentatively resolved, benefited
14 immensely from the work product of Relator's counsel. Solely through the efforts of Relator's
15 counsel, the United States found itself in the envious position of possessing *all* of Premera's
16 previously-asserted privileged documents relating to Defendant's calculations, discussions
17 between internal and external counsel, and internal strategic discussions against the United
18 States, without having expended any taxpayer resources. (*See* Court's Orders granting
19 Relator's Motions to Compel, Dkts. 264, 265, and 266). Thus, in the present case where
20 Relator has already declined a Relator's share in a certain administrative future recovery from
21 Premera, the United States was enriched by – yet is paying nothing for – Relator's counsels'
22 efforts.

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³ For instance, in addition to obtaining the evidence previously provided to DOJ, Relator's Counsel was successful
25 in establishing very favorable precedent within the 9th circuit on the rejection of the 11th Circuit *Body* statutory
26 immunity defense to Medicare Contractors (Dkt. #132) and establishing a ten year Statute of Limitations in non-
intervened actions (Dkt. # 287).

1 Lastly, an additional basis now exists in support of Relator’s counsels’ entitlement to
2 fees and expenses. Because the United States has now settled the MSP allegations contained
3 in Count II of the complaint with Premera through an administrative “alternative remedy”, 31
4 U.S.C. § 3730(c)(5) specifically provides that Relator is entitled to the “same rights” as under
5 the False Claims Act. (*See ¶ 12, of Keller Declaration*). Of course, these rights include
6 Relator’s entitlement to “receive an amount for reasonable expenses which the court finds to
7 have been necessarily incurred, plus reasonable attorneys’ fees and costs.” 31 U.S.C.
8 §3130(d)(1). As explained earlier, Relator has expressly waived this claim as part of this
9 settlement.

10 We believe that after reviewing the facts of this case, the relevant legal precedent, and
11 considering the Relator's agreement to forego any claim for a Relator's share, the Court will
12 agree that Relator's settlement is reasonable and dismiss this action as requested. The best
13 evidence of this is the fact that it is unopposed. The United States is satisfied. Premera is
14 satisfied. And the Relator is satisfied.

15 If after reviewing the parties' submissions, the Court determines it cannot yet dismiss
16 this action, Relator respectfully urges the Court to schedule a status conference at its earliest
17 convenience to permit the parties to provide additional information that the Court deems
18 necessary.

19 || Dated this 21st day of May 2007, at Marion, Illinois.

20 | Respectfully Submitted,

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14 600 Vine Street
15 Suite 2704
16 Cincinnati, Ohio 45202

17 *Attorneys for Relator, Girish Parikh*

1 Hon. Marsha J. Pechman
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10 UNITED STATES DISTRICT COURT
 11 WESTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA, *ex rel.*
 13 Girish Parikh,

14 Plaintiff,

15 v.

16 PREMERA BLUE CROSS,
 17 a Washington non-profit corporation

18 Defendant.

19 No. C-01-0476

20 Declaration of Girish Parikh in Support of
 21 the Memorandum in Support of Settlement
 22 in Response to the Court's Order (Dkt. #305)

23 GIRISH PARIKH declares as follows:

24 1. I am the Relator in this action. I am over the age of 18 and competent to testify as to
 25 the information contained herein based on my personal knowledge.

26 2. I was present for, and participated in, the mediation which occurred on April 7, 2007.
 27 All of the negotiations were accomplished in my presence and all offers or counter-offers were
 28 made with my consent.

29 3. Prior to, and during, the mediation, I told my lawyers that my goal was to receive a
 30 net settlement amount, which I understood to be what I would receive after payment of
 31 attorneys' fees, expenses and costs (hereafter "Net Settlement Amount"). I also agreed to
 32

1 waive any claim to any alternate remedy share under 31 U.S.C. § 3730(c)(5) of any
2 consideration paid by Premera to the United States, whether through administrative negotiations
3 or otherwise. My lawyers negotiated with this specific goal in mind.

4 4. All settlement negotiations were conducted with the assurance that I would receive
5 the Net Settlement Amount. Any discounts or reductions in Relator's counteroffers consisted of
6 reductions in attorneys fees.

7 5. If the Court dismisses this action, I will receive the Net Settlement Amount I sought
8 at mediation.

9 6. In light of the damages I would have attempted to prove at trial, I am pleased with the
10 settlement obtained and believe that it represents a reasonable compromise and resolution for all
11 involved.

12 7. Although my attorneys devoted a substantial amount of time and resources in this
13 case, they nonetheless substantially reduced their fees in order to obtain this settlement. I
14 believe my attorneys have earned the fees they will receive in this proposed settlement and are
15 entitled to reimbursement of their costs.

16 8. My preference is that the terms of settlement remain confidential. If the law allows it,
17 I would like the Court to seal the documents reflecting settlement amounts.

18 I declare under penalty of perjury under the laws of the United States that the foregoing is
19 true and correct to the best of my knowledge, information, and belief.

Dated this 21st day of May 2007, at San Francisco, California.

Respectfully Submitted,

Girish Parikh, Relator

Declaration of Girish Parikh in Support of the Memorandum in Support of Settlement in Response to the Court's Order (Dkt. #305) - Page 2
CASE NO. C-01-0476

Aschermann Keller LLC
108 West Jackson Street
Marion, Illinois 62959
T (618) 998-9988 F (618) 998-0796

10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA, *ex rel.*
13 Girish Parikh,

14 Plaintiff,

15 v.

16 PREMERA BLUE CROSS,
17 a Washington non-profit corporation

18 Defendant.

19 No. C-01-0476

20 Declaration of Timothy Keller in Support of
21 the Memorandum in Support of Settlement
22 in Response to the Court's Order (Dkt. #305)

23 TIMOTHY KELLER declares as follows:

24 1. I am counsel of record for the Plaintiff in this matter. I am over the age of 18 and
25 competent to testify to the information contained herein based on my personal knowledge.
26
27 2. Attached hereto as Exhibit A is a true and accurate copy of the written report of Dr.
28 Iqbal Mathur, Ph.D., an expert economist retained by Relator to testify as to Relator's economic
damages.

29 3. Relator was seeking "special damages" under § 3730(h) consisting of non-economic
30 losses for the emotional damages he suffered.

1 4. Relator's counsel began working with Mr. Parikh in 2000. Since that time, four
2 different law firms and a sole practitioner local counsel have worked on behalf of Relator on
3 this matter.

4 5. Since 2000, Defendant has been represented by five large law firms, two of which
5 have offices in Washington D.C., two of the firms were located in Seattle, Washington, and
6 other has offices both nationwide and around the globe. They include Riddell Williams P.S.,
7 Crowell & Moring LLP, Wiley Rein LLP, Yarmuth Wilsdon Calfo PLLC, and Sonnenschein
8 Nath & Rosenthal LLP.

9 6. During the mediation, Assistant United States Attorney Peter Winn indicated to both
10 Premera and Relator that the United States did not view the actions of Premera as amounting to
11 a False Claims Act violation but did believe that there was an overpayment of MSP funds by
12 Premera, which the government would be pursuing under its contract and unjust enrichment
13 theories of recovery.

14 7. It was Relator's counsel's understanding that Premera had two material conditions to
15 settlement: (1) Relator's agreement to hold the settlement confidential, to which Relator
16 agreed; and, (2) it would not agree to pay a "False Claims Act" settlement.

17 8. In the course of the mediation, Premera and the United States, through AUSA Peter
18 Winn, both stated they would attempt to settle the United States claims through a separate
19 administrative claim and negotiations involving CMS personnel in Baltimore, Maryland. If that
20 administrative negotiation was unsuccessful, the United States would then proceed against
21 Premera under its own contract and unjust enrichment causes of action—causes of action that
22 Relator is not empowered to bring on behalf of the United States.

23 9. As described in the settlement agreement and as promised by Relator during the
24 negotiations, Relator has waived any claim to any alternate remedy share of any consideration
25 paid by Premera to the United States whether resolved administratively or otherwise under 31
26 U.S.C. § 3730(c)(5).

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1 10. The discounted fees and costs received by Relator's counsel from Premera under the
2 Settlement Agreement were inextricably linked to Relator's claim under 3730(h). Relator
3 would have proceeded in pursuing the same issues during the litigation even if False Claims
4 Action counts were not involved in preparation for trial.

5 11. The Department of Justice informed Relator that it would protect the United States'
6 interests by pursuing the overpayments against Premera identified by Relator during the course
7 of discovery.

8 12. It is my understanding that the Government's April 25, 2007, negotiations with
9 Premera were successful and Premera agreed to repay a negotiated amount of the overpayments
10 that were the subject of Relator's Motion for Summary Judgment (Dkt. # 232) to the United
11 States.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is
13 true and correct to the best of my knowledge, information, and belief.

14 Dated this 21st day of May 2007, at Marion, Illinois.

Respectfully Submitted,

/s/ Timothy Keller

Timothy Keller

ESTIMATION OF LOSS OF INCOME, PENSION AND INSURANCE
GIRISH PARIKH

Ike Mathur, Ph.D.
4 Oxford Ln
Glen Carbon, IL 62034-1531
(618) 288-4025

Report revised: January 16, 2007

Signature: *Ike Mathur*

Exhibit

A

SUMMARY OF ANALYSIS

The value of lost income was estimated using the present value method with an offset discount rate of 1% for phase 2. Phase 1 covers the period from June 01, 2002 to June 01, 2007. Phase 2 covers the period from June 02, 2007 to end of life expectancy for Mr. Parikh and includes both a working component through October 31, 2013 and a pension and insurance benefits component through August 31, 2026.

On the basis of the assumptions and estimations in Tables 1 and 2 for the income, pension and insurance losses shown, the present value of Mr. Parikh's loss of income, pension and insurance is estimated to be \$1,222,653, not inclusive of any doubling of damages, and exclusive of mitigation earnings.

BASIC SOCIOECONOMIC DATA

Date of birth	December 1, 1942
Date of termination	May 31, 2002
Retirement date	10/31/2013
Age on 10/31/2013	70.8 years
Sex, ethnicity	Male, Indian
Life expectancy at age 70.8	12.8 years

INFORMATION SOURCES UTILIZED

For Girish Parikh

1. Information from Mr. Keller's office
2. Deposition of Nancy Ferrara
3. Plaintiff's Exhibit 72.

Other

1. Life Expectancy Table, U.S. National Center for Health Statistics
2. Federal Reserve Board, Prime Rates

ESTIMATION OF LOSS OF INCOME

Outline of Estimation Procedure

The following procedure was utilized in estimating loss of income, pension and insurance.

Determination of loss of income. Income, pension and insurance losses are calculated based on the information available.

Determination of Discount rate. An offset rate of 1% is used for phase 2 for the income and pension losses and 0% for insurance losses.

Time Period For Analyses. The analyses were performed through the end of life expectancy for Mr. Parikh.

Present Value Analyses. The compound and discount rates were applied to the loss of income and pension to calculate the present values as of 06/01/2007.

Determination of Loss of Income, Pension and Insurance Benefits

The loss of income, pension and insurance benefits for Mr. Parikh is based on the information provided to me. Details are summarized in the footnotes to Tables 1 and 2. Phase 1 is defined as the period from June 01, 2002 to June 01, 2007. Estimates for Mr. Parikh's income are provided in Table 1. The future value of income losses for Phase 1 is summarized in Table 1.

Phase 2 is the period from June 02, 2007 to the end of Mr. Parikh's life expectancy. Since the offset method is used in the income analysis, his income, pension and insurance losses are kept constant at the 2007 base levels. I.e., his earnings, pension and insurance

losses are stated in constant 2007 dollars.

It is assumed that Mr. Parikh received a lump sum pension in November 2013. The present value of this liump sum pension November 2013 is shown in Table 2.

It is assumed that Mr. Parikh started receiving retirement related insurance benefits in November 2013. The insurance benefits are calculated to the end of Mr. Parikh's life expectancy. Table 2 shows the estimation and present value of Mr. Parikh's insurance benefits.

Determination of Discount Rate

The discount rate used in the analyses should reflect the time value of money. The yield on the one year t-bill rate is used as the reference point for the discount rate. On average, wages [medical care expenses] go up annually by an amount slightly less [more] than the one year t-bill rate. Compounding an amount by the wage growth rate [medical care expenses increase] and discounting it by the one year t-bill rate gives a present value that is the same if the amount had been discounted by the difference between the one year t-bill rate and the wage growth rate [medical care expenses increase]. This method is called the offset method and is used in this analysis for Phase 2 losses in Table 2.

An offset discount rate of 1% [0%] is used for discounting the Phase 2 income losses [insurance benefit losses] in Table 2.

Time Period for Analyses

The analyses are conducted to the end of Mr. Parikh's life expectancy.

Present Value Analyses

The present value analyses for Phase 2 are summarized in Table 2. The specific assumptions are provided in the footnotes to Table 2.

SUMMARY

The present value of Mr. Parikh's loss of income, pension and insurance are summarized below.

Phase 1: June 01, 2002 to June 01, 2007

\$491,764

Phase 2: June 02, 2007 to end of life expectancy

\$730,889

Total estimated loss of income, pension and insurance

\$1,222,653

These estimates are not inclusive of any doubling of damages, and are exclusive of mitigation earnings.

It is possible that there may be other factors, which are not recognized here, that may influence the estimation of lost future income and pension. If additional relevant information is provided, then this report and the related opinions will be appropriately revised.

TABLE 1
ESTIMATION OF LOSS OF INCOME
PHASE 1: June 2002 - June 01, 2007

Year	Age	Income Loss*	Mitigation Income~	Interest		Total Loss
				on Net Loss^	Total	
2002	59	\$44,202		\$15,742	\$59,944	
2003	60	\$78,427		\$23,454	\$101,881	
2004	61	\$81,172		\$19,015	\$100,187	
2005	62	\$84,013		\$13,618	\$97,631	
2006	63	\$86,954		\$6,731	\$93,685	
2007	64	\$37,799		\$637	\$38,436	
Totals		\$412,567		\$0	\$79,197	\$491,764

~Mitigation income, indicative, is \$29,264 for 2004.

*2000 income	= \$58,509.
2001 estimated income	= \$58,509 X 1.03 = \$60,264.
2002 estimated income =	\$60264 X 1.03 = \$62,072.
SS @ 7.65% of \$62,072	= 4,749.
401 K @ 3% of \$62,072	= 1,863.
Other benefits	= 7,091.
2002 total estimated income	= \$75,775.
2002 income loss	= \$75,775 X 7/12 = \$44,202.

Income increases based on 3-4%, average 3.5%.

2003, 3.5%

2004, 3.5%

2005, 3.5%

2006, 3.5%

2007, 3.5%

2003 estimated income and loss = \$75,775 X 1.035 = \$78,427.

2004 estimated income and loss = \$78,427 X 1.035 = \$81,172.

2004 unemployment compensation, mitigation = \$29,264.

2005 estimated income and loss = \$81,172 X 1.035 = \$84,013.

2006 estimated income and loss = \$84,013 X 1.035 = \$86,954.

2007 estimated income and loss = \$86,954 X 1.035 = \$89,997.

2007 estimated loss for Phase 1 = \$89,997 X 0.42 = \$37,799.

^Prime interest rates used:

2002, 4.67%

2003, 4.12%

2004, 4.34%

2005, 6.19%

2006, 7.96%

TABLE 2
ESTIMATION OF LOSS OF INCOME, PENSION AND INSURANCE
PHASE 2: FEB 10, 2007 to End of Life Expectancy

JUN/YR	AGE	INC/PEN/INS^	P VALUE*	CUMULATIVE
2007	64	\$52,198	\$52,047	\$52,047
2008	65	89,997	88,286	140,332
2009	66	89,997	87,407	227,739
2010	67	89,997	86,537	314,277
2011	68	89,997	85,676	399,953
2012	69	89,997	84,824	484,777
2013	70	74,998	69,983	554,760
NOV 2013	70	77,488	72,307	627,067
NOV 2013	70	1,348	1,348	628,416
2014	71	8,090	8,090	636,506
2015	72	8,090	8,090	644,596
2016	73	8,090	8,090	652,686
2017	74	8,090	8,090	660,776
2018	75	8,090	8,090	668,866
2019	76	8,090	8,090	676,956
2020	77	8,090	8,090	685,046
2021	78	8,090	8,090	693,136
2022	79	8,090	8,090	701,226
2023	80	8,090	8,090	709,316
2024	81	8,090	8,090	717,406
2025	82	8,090	8,090	725,496
2026	83	5,393	5,393	730,889
<hr/>				
<hr/>		TOTALS	\$758,490	\$730,889

[^]Income loss estimations:

2007 estimated income and loss = \$86,954 X 1.035 = \$89,997.

2007 estimated loss for Phase 2 = \$89,997 - \$37,799 = \$52,198.

All incomes are stated in constant 2007 dollars.

*Present values are calculated for June 01, 2007.

*2013 income losses are calculated through 10/31/2013.

*Discount rate - wage growth rate = 1%.

[^]Pension loss estimations:

2002 salary and bonus / total income = \$62,072/\$75,775 = 0.82

Pension is based on average of previous five years' salary.

Nov 2013 pension salary base = \$89,997 X 0.82 = \$73,798.

Nov 2013 pension loss = \$73,798 X 1.05 = \$77,488.

[^]Retirement insurance benefits loss estimations:

Life expectancy at age 70.8 years = 12 years and 10 months.

2002 insurance / total income = \$6,816/\$75,775 = 0.09.

Nov 2013 insurance stated in 2007 real dollars = \$89,997 X 0.09 = \$8,090.

Estimated insurance loss, Nov/Dec 2013 = \$8,090/6 = \$1,348.

[^]Insurance loss is calculated through 8/31/2026.

*Discount rate - medical care cost increase = 0%.

1 Hon. Marsha J. Pechman
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON

10 UNITED STATES OF AMERICA,
11 ex rel., Girish Parikh,

12 Plaintiff,

13 v.

14 PREMERA BLUE CROSS,
15 a Washington non-profit Corporation

16 Defendant.

17 No. C-01-0476

18 CERTIFICATE OF SERVICE

19 I hereby certify that on this date, I electronically filed the Memorandum in Support of
20 Settlement in Response to the Court's Order (Dkt. #305), which will send notification of such
21 filing to:

22 Peter Winn Peter.Winn@usdoj.gov; Kathleen.M.Cline@usdoj.gov;
23 ECF-Civ.USAWAW@usdoj.gov; Pat.Buyce@usdoj.gov

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27 ltardiff@yarmuth.com; mdiaz@yarmuth.com

28 Kathryn Bucher kbucher@wileyrein.com; lsimmons@wileyrein.com

Barbara Van Gelder bvangelder@wileyrein.com

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 Dated this 21st of May 2007, at Marion, Illinois.

4 _____ /s/ Timothy Keller
5 Timothy Keller

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